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Alan Rodger's Library

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II.

Alan Rodger's Library: Introduction

Karen Baston*

Est hic magna commoditas bibliothecae ut studiosi possint
studere.¹

Alan Ferguson Rodger, Lord Rodger of Earlsferry² was born 18 September 1944 in Glasgow. He began his remarkable academic career at the Kelvinside Academy. After taking his first degree in modern languages at the University of Glasgow, he studied law at the same university and took his LLB there before moving to the University of Oxford for postgraduate study where he took an MA and a D.Phil. Rodger's doctorate on Roman property law and delict, 'Servitudes of Light and Stillicide in Roman Law', was published in 1972 as Owners and

¹The author wishes to thank Ernest Metzger for his encouragement and patience throughout the cataloguing project, John W. Cairns for his advice and valuable feedback on an earlier version of this essay, and James Hamilton for his thoughtful copy editing. I would also like to thank the Rodger Estate, the Scottish Universities Law Institute, and the University of Glasgow for their support.

¹'The greatest advantage of the library is that those who want to study, can study.' (Joseph Justus Scaliger.)

²These facts are taken from some of the many obituaries and tributes that appeared after Lord Rodger's untimely death in 2011, including D. Edward, P. Cullen, D. Johnston and D. Mackay, 'Lord Rodger of Earlsferry Obituary', The Guardian (4 July 2011); J. Getzler, 'Lord Rodger of Earlsferry, Justice of the Supreme Court of the United Kingdom, and Visitor of St Hugh's College', at the website of St Hugh's College, University of Oxford; 'Obituary: Lord Rodger of Earlsferry, FRSE, FBA, QC, PC, Law Lord', The Scotsman (27 June 2011); and A. O'Neill, 'Lord Rodger of Earlsferry: 1944-2011', UK Supreme Court Blog (29 Jun 2011). See also H. MacQueen and S. Wortley, 'Lord Rodger of Earlsferry (18 September 1944 – 26 June 2011', Edin. L. R., 15 (2011), 343-46.

Neighbours in Roman Law. He remained in Oxford as a tutor and research fellow from 1970 to 1972 and travelled to Germany before returning to Scotland to embark on a legal career.

Rodger was admitted into the Faculty of Advocates in 1974 and soon found success in his new profession. He was Clerk of Faculty from 1976 to 1979 and he became a QC in 1985. Rodger was Home Advocate Depute (1986-1988), Solicitor General for Scotland (1989-1992), and Lord Advocate (1992-1995) before being appointed as a Senator of the College of Justice in 1995. He was Lord Justice General of Scotland and Lord President of the Court of Session from 1996 to 2001 when he became a Lord Appeal in Ordinary in the House of Lords. He became a Justice of the Supreme Court of the United Kingdom in 2009.

Alongside this prestigious legal career, Rodger remained a scholar. He published in academic journals and was a regular speaker and participant at conferences and seminars. Rodger was elected as a fellow of the British Academy and of the Royal Society of Edinburgh. His scholarship was evident in his legal career and he cited not just Roman law in his judgments but also law from later historical traditions including the ius commune.³

Lord Rodger left a library made up of books and periodicals which considered important aspects of Roman law scholarship from the nineteenth to the early twenty-first centuries. It was the library of a working scholar who maintained a lifelong interest in a subject that first attracted his attention when he was a student. Since Rodger used it to both keep up with the latest scholarship and to make his own contributions, his library shows his intense engagement with Roman law. The inscriptions that many of the books contain meanwhile demonstrate his connection and friendship with an international network of legal historians.

³MacQueen and Wortley (note 2), 345.

The books and periodicals in his library helped Rodger to study and illuminate Roman law while adding his criticisms and insights to its history. What is offered is a brief overview of some of the library's contents. I leave further investigations of the collection and its significance to scholars of Roman law.

The Books

Lord Rodger's books occupied various locations in his Dublin Street home. They were mostly shelved by theme with Scots law and legal papers found in his large study. An Edinburgh press off the drawing room contained books Rodger used in his research for his The Courts, the Church and the Constitution: Aspects of the Disruption of 1843 while a similar compartment off the dining room held sets of English legal texts. Leisure reading was shelved in the foyer and bedrooms with an additional small selection in Rodger's study.

Lord Rodger's collection of Roman law books was housed in two large bookcases, one on each side of the entry hall (Figs. 1 to 3). This impressive book collection was therefore the first thing any visitor to Rodger's home saw upon arrival. The books were shelved in alphabetical order by author and formed a selection that any librarian or scholar would recognise as having a unified theme. The bookcases were very full and in some places the books they held were double shelved. The cabinets under the shelves also held mainly Roman law books. Several crates of books were returned to Edinburgh from Rodger's London office: Prof Metzger and I checked these for books that must have been part of the Roman law collection. These books were then added to the bookcases in the hall so that they could be documented before they were distributed.

Once Prof Metzger and I determined the scope and location of the collection, I started its documentation. A preliminary catalogue was compiled between November 2011 and March 2012.

This version of the catalogue captured basic publication information and provenance details for roughly 1,500 items which consisted of books, periodicals, and school texts. The cataloguing had to take place under pressures of space and time since the Dublin Street house was being offered for sale as we worked on the project. The information collected was later checked against library catalogues both to check its accuracy and to determine the eventual destination of the materials. Prof Metzger also undertook an editorial role at an early stage and carefully checked my transcriptions, especially those of Latin and German titles and inscriptions. I am extremely grateful for this: his familiarity with the texts in the collection and knowledge of Lord Rodger's contributions to legal historical scholarship and debate have enriched the catalogue beyond anything I, a non-Romanist, could have ever accomplished alone.

Provenance

Lord Rodger signed most of his books on or near their front pastedowns. His neat signature, 'Alan F. Rodger', appears in books from his school days onwards (Fig. 4).

Many of Rodger's books were acquired second hand. It is easy to imagine him frequenting bookshops like Thornton's and Blackwell's as a student and later tutor in Oxford; he certainly developed his collection there. This is revealed by a card found inside one of his copies of Otto Lenel's Palingenesia iuris civilis. The 1960 reprint of the Leipzig edition of 1889 was produced in Graz. The card notes that his order of 24 August 1968 of this title is ready to be collected from Blackwell's, Broad Street, Oxford at cost of £104 19s 0d. It is not surprising to find Rodger willing to pay so much for this single acquisition in 1968. He was later to describe Lenel as 'the greatest scholar of Roman law in modern times'⁴

⁴A. Rodger, 'Savigny in the Strand', Irish Jurist, XXVIII-XXX (1993-1995), 10.

and, as Prof Metzger notes in his essay on Rodger's Roman law writings, Rodger used Lenel's Palingensia as the foundation for many of his own studies.⁵ Rodger's teacher David Daube had been a pupil of Lenel and Daube passed the German scholar's techniques to Rodger.⁶ For Rodger, Lenel's 'brilliant Palingenesia' had 'transformed the study of Roman law so as to render obsolete everything written up until that time.'⁷

He remained a book buyer throughout his life and several receipts were found tucked inside his books. Some of his collection, however, came from people he knew and this meant that many of Rodger's second hand books had interesting previous owners. These included eminent scholars of Roman law, among them J. A. C. Thomas, who had inspired Rodger's interest in the subject as a lecturer for the Ordinary Class of Civil Law at Glasgow University in 1962,⁸ and other well-known legal scholars such as W. W. Buckland, P. W. Duff, F. H. Lawson, Barry Nicholas, and William Stallybrass.

Some of Rodger's books were well-travelled. His copy of Max Kaser's Das römische Privatrecht (second edition, volume 1) contained a note that 'These volumes of the second edition of Kaser's Privatrecht formerly belonged to Franz Wieacker. Georg Wolf inherited them from him. They were given to me on the occasion of my visit to Freiburg to give a public lecture on 15 December 1994.' Other books also had multiple owners before reaching Rodger. His two volumes of the ninth edition of Georg Friedrich Puchta and Paul Krueger's Cursus der Institutionen, had, for example, belonged to the lawyer James Kenneth Stephen, who bought them soon after they were

⁵See Chapter V below.

⁶Getzler (note 2).

⁷A. Rodger, 'Behind the Scenes of Roman Law', Oxford J. Legal Stud., 3 (1983), 404.

⁸A. Rodger, 'Concealing a Servitude', in P. G. Stein and A. D. E. Lewis, eds., Studies in Justinian's Institutes in Memory of J. A. C. Thomas (London 1983), 134.

published in February 1882 in Berlin; the Classical scholar Edward Alfred Sonneschein, who acquired them in 1892; and his fellow classical scholar Herbert Hill of Swansea, who inscribed them in 1934. The books joined Rodger's collection in 1982, a century after their first purchase.

Rodger also received books as gifts and many of these contain inscriptions from scholars who were grateful for his intellectual contributions as well as for his friendship

School Books and Prize Books

Rodger showed an early interest in Latin, as reflected in the books he began acquiring at school. These range from school texts to grammar books, works by classical authors, dictionaries, and collections of Latin poetry. We have recorded these books in a separate catalogue.⁹ The school books reflect the importance of Latin as a subject when Rodger attended Kelvinside Academy. Along with English and mathematics, Latin formed a triumvirate of studies for university-bound boys.¹⁰ Rodger kept his collection of elementary Latin texts. Some of them are inscribed with his notes about them, his critiques of them, and details about the dates and sessions he used them: they are a testament to the educational tradition Rodger experienced in Scotland in the late 1950s and early 1960s.

As their commemorative bookplates reveal, Rodger earned some of his books as prizes when he was at university. These clearly show that he increasingly focussed on Roman law during his time at university. His prize books include The Oxford Book of Latin Verse, awarded with The Oxford Book of Medieval Verse,¹¹ Fraenkel's Horace (Faculty Prize in Civil Law, 1962-

⁹K. Baston and E. Metzger, 'School Book Catalogue', below, Chapter IV.

¹⁰J. Scotland, The History of Scottish Education, 2: From 1872 to the Present Day (London 1969), 75.

¹¹In each: 'Alanvs Fergvson Rodger in classe litt. hvm. Vniversitatis Glasgvensis alvmnvs ingenio ac labore insignis hoc praemivm merito

1963), the then newly published Gaius by Tony Honoré (Faculty Prize in Civil Law, 1962-1963), Fritz Schulz's History of Roman Legal Science (Faculty Prize in Civil Law, 1962-1963) and his Principles of Roman Law (Faculty Prize in Scottish Private Law I and II, Session 1964-1965), Alan Watson, Contract of Mandate in Roman Law (Faculty Prize in Scottish Private Law I and II, Session 1964-1965), and David Daube, ed., Studies in the Roman Law of Sale: Dedicated to the Memory of Francis de Zulueta (Faculty Prize in Scottish Private Law I and II, 1964-1965).

Latin and Other Languages

Rodger's strong academic background provided his intellectual starting point. As Lord Hope recalled in a tribute, Rodger was particularly known for

his abiding interest in Roman law, developed at Oxford, under Professor David Daube. He carried this interest and learning with him throughout his life and from time to time passages from Gaius, Justinian or the other civilian jurists would appear in his judgments. On one occasion he expressed his entire judgement in Latin.¹²

It is clear from his selection of books and from the citations he made in his writings that in addition to his fluency in Latin, Rodger also read French, Italian, and especially German. Rodger also had a few books in Spanish, Portuguese, and Dutch.¹³

consecvtvs est teste Christiano J. Fordyce L.H.P. apvd Coll. Glasgvnse A.D. MCMLXII.'

¹²Lord Hope, 'Tribute to Lord Rodger of Earlsferry', The Supreme Court Annual Report and Accounts, 2011-2012 (London 2012), 16. See Home Secretary v. A.F. [2009] UKHL 28.

¹³It is worth noting however that Rodger had sympathy for those who lacked his gift for languages. In a review of a book meant for non-specialist readers, he noted that consistency in offering translations in reference works was essential, especially as an aid for students. A. Rodger, 'Good Companion?', Oxford J. Legal Stud., 1 (1981), 258.

It is not my intention to draw conclusions about Rodger's intellectual outlook based on his books: that will provide work for future scholars. The variety of books in different languages in his library is, however, worth noting. German books formed the majority of the collection and the library included the key texts of German scholarship in their original language. Rodger outlined his interest in German scholarship and scholars in his study of nineteenth century Scottish advocates and their relationship with Germany published in the Law Quarterly Review in 1994.¹⁴ The article discusses the work and legacy of German jurists like Gustav Hugo, Friedrich Karl von Savigny, Friedrich Bluhme, Otto Lenel, and Otto Gradenwitz: books by all of them were present in Rodger's collection, just as they would be in any Romanist's library. Of these, Rodger identified Savigny as 'undoubtedly the leading figure'¹⁵ and Rodger had six books by him, many of them first editions, including two editions of the book which caused him to be noticed in 1803, his Das Recht des Besitzes.¹⁶ Rodger noted that these jurists, representatives of Pandektenrecht or 'Pandect-science', were 'keenly interested in legal science'¹⁷ and not just in antiquarian pursuits. Their attempt 'to work out a system of law based on the Roman sources' gave 'their work . . . a universal quality.'¹⁸ For someone like Rodger, who 'used the principles of Roman law to point the way to a solution of contemporary problems',¹⁹ their appeal is clear. Their work benefitted from the discovery of

¹⁴A. Rodger, 'Scottish Advocates in the Nineteenth Century: The German Connection', Law Quarterly Review 110 (1994), 563-91.

¹⁵Id., 572.

¹⁶Id. Rodger's copies were the edition of 1827 and a reprint of the seventh edition produced in 1967.

¹⁷Id., 575.

¹⁸Id., 576.

¹⁹Edward at al. (note 2).

a near complete manuscript of the Institutes of Gaius in 1816.²⁰ Rodger's library also contained writings by their critics like Rudolf von Jhering though it would be unwise to assume too much about his own thinking based on the books he owned. Rodger's selection of books by German scholars spanned the nineteenth century and continued into the twentieth and encompassed many areas of legal historical scholarship. These included Theodor Mommsen's editions of the Digest, Lenel's work on the Praetor's Edict as well as an extensive selection of his other writings, new editions of Justinian's Institutes and Code by Paul Krueger, studies of Roman private law by Max Kaser, and Franz Wieacker's studies of legal history.

Books came to Rodger's library from across Europe. Italian scholars like Vincenzo Arangio-Ruiz, Contardo Ferrini, and Salvatore Riccobono and his co-editors were well represented. Books by British scholars and scholars working in the British Isles, some of whom were known to Rodger, like J. A. C. Thomas, Tony Honoré, David Daube, and Alan Watson,²¹ were also present. Rodger's library also held works of modern scholarship from across the continent. Rodger's own writings showed that he engaged with the work of scholars past and present. He did not always agree with the writers of his library books. Of a piece by Arangio-Ruiz entitled 'Precedenti scolastici del Digesto' and reprinted in the second volume of that author's Scritti di diritto romano, Rodger remarked that '[t]hough its conclusions are unacceptable, the article contains much of interest.'²²

Rodger subscribed to or had selected issues of periodicals like Labeo, The Journal of Roman Studies, and Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (romanistische

²⁰Rodger (note 15), 572. Gaius was very well represented in Roger's library. There were seventeen volumes relating to the Institutes in various languages as well as commentaries and studies of the work.

²¹Watson was Douglas Professor of Civil Law in Glasgow from 1965 to 1969.

²²Rodger (note 7), 396.

Abteilung). These would have allowed him to keep up with new developments and debates in Roman law scholarship.

Antiquarian books

There were very few antiquarian books in Rodger's library. The oldest book found in the library was a copy of the Digest printed in 1606 by the famous publishers, the Juntas of Venice. This, in addition to its value as an antiquarian book created by a notable publishing firm, has an interesting provenance since it contains the bookplate of Patrick Hume (1641-1724), first earl of Marchmont, which proclaims his position as Lord High Chancellor of Scotland in each of its two volumes. Hume had studied law in Paris and was Lord Chancellor of Scotland from 1696 to 1702.²³ The only other seventeenth-century book is a copy of Antonio Pérez's Institutiones Imperiales which was produced in Leyden in 1689: it contains the bookplate of the nineteenth century solicitor John Peter Fearon. There were only three books from the eighteenth century in the collection: Velleius Paterculus, Historiae romanae quae supersunt (London, 1718) and two copies of Johann Gottlieb Heineccius, Elementa iuris civilis secundum ordinem institutionum commoda auditoribus methodo adornata (Leiden, 1751 and Leipzig, 1766). It is interesting to note that Rodger did not add his own signature to the antiquarian books he owned.

Lord Rodger and Libraries

Rodger was aware of and interested in libraries other than his own. He provided an introduction to a study of the seventeenth century Lord George Douglas bequest to the Advocates Library,²⁴ and on another occasion he considered that

²³J. R. Young, 'Hume, Patrick, first earl of Marchmont (1641-1724)', Oxford Dictionary of National Biography (Oxford 2004).

²⁴A. Rodger, 'Forward' in W. A. Kelly, The Library of Lord George Douglas (ca. 1667/8?-1693?): An Early Donation to the Advocates Library (Cambridge 1997), xi-xii.

institution's collection of German books.²⁵ His library included a copy of Heinz Peter Weber's study of the part of Savigny's library now housed in the University of Bonn Library.²⁶ In his essay 'Savigny on the Strand', Rodger revealed his penchant for studying bookshelves to glean information about their owners' interests from them. Bookshelves provided evidence for nothing less than

the apparent failure of universities to win over most of their graduates to any lifelong interest in the academic aspects of the subjects which they study. The physical signs of this failure are often to be seen on the bookshelves of the homes which you visit – the tell-tale unchanging cluster of French or German novels which were once the set texts for a modern languages graduate, or Sir Gawain and the Green Knight peeping forlornly out from the growing thicket of Edna O'Briens and Muriel Sparks on the shelves of someone who long ago did a course on English Language.²⁷

Graduates of law were not free of this fault of literature students:

In the same way the office of many a lawyer contains a small cluster of ageing or obsolete textbooks which would allow a legal archaeologist to determine fairly precisely when the occupant graduated and thereby released himself from the painful obligation to purchase legal texts.²⁸

The same certainly could not be said of Rodger. His bookshelves combined the texts of his university years with the latest publications on Roman law. His lifelong interest

²⁵Rodger (note 15), 579–81.

²⁶H. P. Weber, Die Bibliothek des Juristen Friedrich Carl von Savigny in der Universitätsbibliothek Bonn (Bonn 1971).

²⁷Rodger (note 4), 5–6.

²⁸Id.

was clear to see from the moment a visitor entered his home and saw the well-stocked bookshelves in his hallway. It was and is also evident to anyone reading his studies and criticisms of Roman law. The catalogue offered here therefore includes notes about books and journals from his library which contain publications by Rodger. There is also a bibliography of his writings on Roman law and other topics offered as an appendix to this catalogue.²⁹

The Fates of Books

Thanks to the generosity of the Rodger Estate and the Scottish Universities Law Institute (SULI), Lord Rodger's library will continue to be used by scholars of Roman law. The universities of Aberdeen, Edinburgh, and Glasgow have all received donations from the collection. Prof Metzger worked tirelessly to identify the appropriate institutional destinations for each of the books and to deliver them. Private scholars have also benefitted from Lord Rodger's bibliographic legacy. It is hoped that the dispersal of Rodger's remarkable library will continue to inspire scholarship in a subject that interested him throughout his life.

It is also hoped that the annotated catalogue that follows will play a similar role while offering a fitting tribute to one of the foremost scholars of Roman law and legal history of his age. In the first John Maurice Kelly Memorial Lecture, Rodger referred to Savigny's belief that scholarship lived on beyond the individual:

Savigny . . . saw it as our task to examine critically the accumulated wisdom of our predecessors For he considered that, though any single individual's work might pass away, there would remain 'the thought, developing through the lifetimes of individuals, which binds all of us

²⁹G. Gretton and E. Metzger, 'Bibliography of Works by Alan Rodger', below, Chapter VI.

who work seriously and with love in a great abiding community, and in which each individual's contribution, though small, finds its continuing life'.³⁰

Rodger's own contributions were far from small and scholars of Roman law will continue to benefit from his scholarship and the legacy of his library for many years to come.

³⁰Rodger (note 4), 20.